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APR 03 2013

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES N. HATTEN, Clerk  
By: *[Signature]*  
Deputy Clerk

WILLIAM D. PHILLIPS,

Plaintiff,

vs.

INTERNAL REVENUE  
SERVICE,

Defendant.

CIVIL ACTION FILE NO.

1:13-CV-1074

JOE

**COMPLAINT**

COMES NOW Williams D. Phillips, Plaintiff in the above-styled action, and brings this complaint pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). Plaintiff shows this Court as follows

1. William D. Phillips (hereinafter "Plaintiff") is a citizen of the United States and a resident of the State of Georgia and of DeKalb County.
2. Defendant Internal Revenue Service (hereinafter "Defendant") is an agency of the United States Government.
3. Defendant is subject to the jurisdiction and venue of this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

4. On September 7, 2012, the Law Office of Adam J. Conti, LLC, acting on behalf of Plaintiff, submitted a Freedom of Information Act (“FOIA”) request to Defendant seeking “copies of all e-mails generated from June 1, 2012 through June 5, 2012 between William Ankrum (SEID YVDCB), Irene Sanchez (SEID 1TSDB) and Stephen Manning (SEID 6MBNB). In addition, we request all e-mails specifically with Mr. Phillips name within the subject line or in the content of the message. Mr. Phillips may be identified as Williams Phillips, Bill Phillips or Bill.” A true and accurate copy of said request, without enclosures, is attached hereto as Exhibit “A”.
5. On October 30, 2012, Defendant responded by producing two (2) pages of requested records to Complainant. Defendant stated, “This is a full grant of your request.” Defendant did not claim to have withheld any documents from disclosure on grounds of any exemption. A true and accurate copy of said response, with the produced documents (and with Plaintiff’s home address redacted), is attached hereto as Exhibit “B”.
6. However, contrary to Defendant’s representation, the two pages of produced records did not constitute all of the responsive e-mails in Defendant’s custody and control. Plaintiff himself was already in possession of an e-mail thread or

chain that was responsive to his request, but that Defendant failed to produce.

A true and accurate copy of the e-mail thread in question is attached hereto as Exhibit "C".

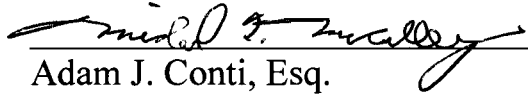
7. Therefore, in responding to Plaintiff's FOIA request, Defendant failed to conduct a reasonable search of its records. Had Defendant conducted a reasonable search, it would have located the documents contained in Plaintiff's Exhibit "C" and more.
8. On November 20, 2012, Plaintiff appealed Defendant's October 30, 2012 response to his FOIA request via a letter to Defendant's appeals department. A true and accurate copy of said letter, without enclosures, is attached as Exhibit "D".
9. On January 10, 2013, Defendant's appeals department replied that Defendant had conducted a reasonable search of its records and that Defendant has closed the case file. A true and accurate copy of said letter is attached as Exhibit "E".
10. Plaintiff has timely and properly exhausted his administrative remedies prior to filing this lawsuit.

**WHEREFORE:** Plaintiff requests that the Court:

- a. Order Defendant to find and produce records improperly withheld from Plaintiff;

- b. Award Plaintiff reasonable attorney's fees and costs of litigation; and,
- c. Grant Plaintiff such additional relief as the Court deems appropriate.

Respectfully submitted this 3<sup>rd</sup> day of April, 2013.



Adam J. Conti, Esq.

Georgia Bar No. 182475

Michael T. McCulley, Esq.

Georgia Bar No. 486989

Attorney for William D. Phillips

Adam J. Conti, LLC.

400 Northridge Road, Suite 255

Atlanta, Ga 30350

Telephone: 404-531-0701

Fax: 404-531-0082

E-mail: [aconti@contilaw.com](mailto:aconti@contilaw.com)

[mmcculley@contilaw.com](mailto:mmcculley@contilaw.com)

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Employment Law

E-mail: [acenti@contilaw.com](mailto:acenti@contilaw.com)  
[www.contilaw.com](http://www.contilaw.com)

September 7, 2012

**by Certified U.S. Mail. Return Receipt Requested**  
Internal Revenue Service  
Disclosure Scanning Operation-Stop 93A  
P.O. Box 621506  
Atlanta, GA 30362-3006

Re: William D. Phillips  
Request for Documents

Dear Disclosure Officer:

Our firm represents William D. Phillips with respect to matters arising from his employment as a Management Analyst with the Internal Revenue Service in Atlanta, Georgia. His executed Designation of Representative is attached.

I am writing your office to request that a copy of the following documents be provided under the Freedom of Information Act. We are requesting copies of all e-mails generated from June 1, 2012 through June 5, 2012 between William Ankrum (SEID YVDCB), Irene Sanchez (SEID 1TSDB) and Stephen Manning (SEID 6MBNB). In addition, we request all e-mails specifically with Mr. Phillips name within the subject line or in the content of the message. Mr. Phillips may be identified as William Phillips, Bill Phillips or Bill.

In order to determine Mr. Phillips' status for the applicability of fees, Mr. Phillips is the "Other Requester" seeking information for his personal use. As proof of identity, we have enclosed a copy of Mr. Phillips' passport card. Mr. Phillips is willing to pay fees for this request up to a maximum of \$200.00. If your office estimate the fees will exceed this limit, please inform our office prior.

Thank you for your consideration of this request.

Very truly yours,

  
Adam J. Conti

AJC/arf  
Enclosures  
cc: William D. Phillips

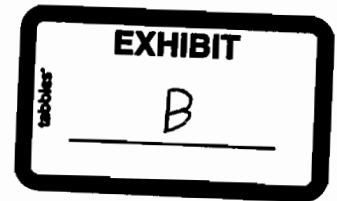
EXHIBIT

  
A



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224



October 30, 2012

William D. Phillips  
[REDACTED]  
[REDACTED]

Dear Mr. Phillips:

I am responding to your Freedom of Information Act (FOIA) request dated September 7, 2012 that we received on September 11, 2012.

You asked for copies of all e-mails generated from June 1, 2012 through June 5, 2012 between William Ankrum, Irene Sanchez and Stephen Manning. In addition, you requested all e-mails specifically with Mr. Phillips name within the subject line or in the content of the message. Mr. Phillips may be identified as William Phillips, Bill Phillips or Bill. I am enclosing a copy of the requested records consisting of 2 pages. This is a full grant of your request.

If you have any questions please call Disclosure Specialist Marian O Hale ID # 1000235178, at (213) 576-3633 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F12256-0207.

Sincerely,

Marian O. Hale  
Disclosure Specialist  
Disclosure Office 13

Enclosure  
Responsive Records

## **Manning Stephen (ACIO)**

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**From:** Sanchez Irene R  
**Sent:** Tuesday, June 05, 2012 5:13 PM  
**To:** Manning Stephen (ACIO)  
**Subject:** RE: 5081 access

will do.

also just an update -

Bill Ankrum and Kurt Alberts will be chatting with Bill Phillips about having Bill Phillips provide some analytical support on software management.

I'll let you know the outcome.

irene  
(512)417-3599

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**From:** Manning Stephen (ACIO)  
**Sent:** Tuesday, June 05, 2012 3:36 PM  
**To:** Sanchez Irene R  
**Subject:** 5081 access

Irene – realizing you inherited Bill Phillips from another organization, he may have had privileges to other systems in 5081 that he no longer needs. Can you check in the 5081 system for what he has access to and ensure that it is just stuff he needs for working in your organization? Anything else please delete.....thanks, and let me know when you get it done.....Steve

**From:** Phillips William D [william.phillips@irs.gov]  
**Sent:** Monday, June 04, 2012 12:52 PM  
**To:** Sanchez Irene R  
**Subject:** RE: Support Needed

Ok, I am still finishing up a couple of things for you and will hopefully be done soon.

**From:** Sanchez Irene R  
**Sent:** Monday, June 04, 2012 3:23 PM  
**To:** Phillips William D  
**Subject:** Support Needed

Hi Bill,

I wanted to give you a heads up that my peer Bill Ankrum of Operations Service Support (OSS) is interested in having you assist with some critical program activities around portfolio and software asset management.

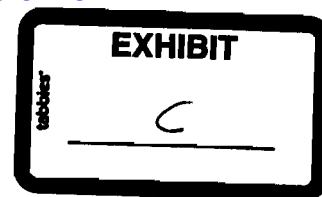
I had previously let Bill know that you possessed a strong analytical skillset, but you were being underutilized in my org., performing ticket analysis (not GS-15 level).

Charlene will be scheduling a conference call for you and Kurt Alberts from Bill Ankrum's org to discuss how you can support OSS.

irene  
(512)417-3599

10/29/2012





**From:** Phillips William D [william.phillips@irs.gov]  
**Sent:** Monday, July 23, 2012 9:06 AM  
**To:** Phillips William D  
**Subject:** FW: Bill Phillips

**From:** Dix Michael F  
**Sent:** Wednesday, June 06, 2012 9:25 AM  
**To:** Phillips William D  
**Cc:** Janes Cathy J  
**Subject:** RE: Bill Phillips

Sounds great Bill. I'll setup a call tomorrow morning sometime and go from there.

-Mike

**From:** Phillips William D  
**Sent:** Wednesday, June 06, 2012 6:23 AM  
**To:** Dix Michael F  
**Cc:** Janes Cathy J  
**Subject:** RE: Bill Phillips

Hello Mike,

Why don't we calendar something for early tomorrow? I am finishing up an analysis for Irene and then we can start fresh.

bill

**From:** Dix Michael F  
**Sent:** Wednesday, June 06, 2012 9:19 AM  
**To:** Phillips William D  
**Cc:** Janes Cathy J  
**Subject:** FW: Bill Phillips

William,  
Do you have some free time today to discuss the activities around software and what the executives are looking for?

-Mike

**From:** Alberts Kurt E  
**Sent:** Monday, June 04, 2012 10:34 AM  
**To:** Dix Michael F  
**Cc:** Alberts Kurt E  
**Subject:** FW: Bill Phillips

FYI

Kurt Alberts  
Service Assets & Configuration Mgt Program Manager  
Voice 801-620-3606  
Cell 801-389-2680  
Fax 801-620-3603

**From:** Ankrum William H  
**Sent:** Monday, June 04, 2012 11:32 AM  
**To:** Sanchez Irene R; Alberts Kurt E  
**Subject:** RE: Bill Phillips

Irene, yes – Kurt is interested in utilizing Bill on the current **Software Portfolio Triage** activities and our longer term **Software Asset Management** activities.

Bill can contact Kurt directly.

Thanks again,

**Bill Ankrum**

Director, Operations Service Support  
User and Network Services (UNS)  
Rm B4-401, 5000 Ellin Road  
Lanham, Maryland 20706  
202-283-7215 (tel)  
202-870-1973 (cell)  
202-283-4403 (fax)

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**From:** Sanchez Irene R  
**Sent:** Monday, June 04, 2012 11:23 AM  
**To:** Ankrum William H  
**Subject:** RE: Bill Phillips

Bill,

Would you be comfortable speaking to B. Phillips directly - this way you or Kurt could ask him specific questions for your needs.

If so, I'll let B. Phillips know that he can contact you or Kurt.

irene  
(512)417-3599

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**From:** Ankrum William H  
**Sent:** Monday, June 04, 2012 10:21 AM  
**To:** Sanchez Irene R  
**Subject:** RE: Bill Phillips

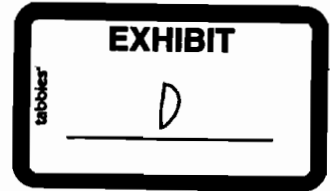
Thanks – meanwhile I'll reach out to Kurt, I know we could use some good analytical assistance triaging our SW portfolio.

I let you know but COB.

**Bill Ankrum**

Director, Operations Service Support  
User and Network Services (UNS)

Rm B4-401, 5000 Ellin Road  
Lanham, Maryland 20706  
202-283-7215 (tel)  
202-870-1973 (cell)  
202-283-4403 (fax)



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Employment Law

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[www.contilaw.com](http://www.contilaw.com)

November 20, 2012

**Via Certified Mail and Return Receipt Requested**

Internal Revenue Service Appeal  
6377A Riverside Avenue, Suite 110  
Riverside, CA 92506  
ATTN: Commissioner

Re: William D. Phillips  
FOIA Appeal

Dear Commissioner:

Our firm represents William D. Phillips with respect to matters arising from his employment as a Management Analyst with the Internal Revenue Service in Atlanta, Georgia. His executed Designation of Representative is attached.

On September 7, 2012, our office submitted a Freedom of Information request on behalf of Mr. Phillips regarding specific e-mails generated between June 1, 2012 through June 5, 2012. The request is attached as Exhibit A. Mr. Phillips received a response to that request on October 30, 2012 which included 2 pages with the stipulation that this was a full grant of his request. The response is attached as Exhibit B. We contests this determination and believe that there are additional records which have been withheld by the Internal Revenue Service in violation of Federal statutes.

On behalf of Mr. Phillips, we respectfully request the Office of Appeals to overturn the initial determination of the Internal Revenue Service, Office of Disclosure and compel the appropriate officials to produce all records initially requested. You may notify our office of your determination at the following address:

Adam J. Conti, LLC  
Adam J. Conti  
400 Northridge Road, Suite 255  
Atlanta, GA 30350  
(404) 531-0701  
Fax: (404) 531-0082

Internal Revenue Service Appeals

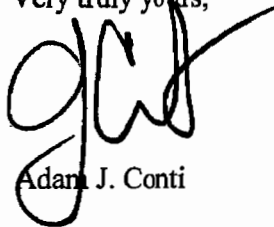
November 20, 2012

Page 2

[aconti@contilaw.com](mailto:aconti@contilaw.com)

If you need additional information or have any questions regarding this appeal, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'AJC', with a long horizontal flourish extending to the right.

Adam J. Conti

AJC/arf

Enclosures

cc: William D. Phillips (Via U.S. Mail)

**Internal Revenue Service**  
Appeals Office M/S 55203  
Fresno, CA 93888-0700

**Department of the Treasury**

**Person to Contact:**

Terri Carrillo  
Employee ID Number: 1000157528  
Tel: 559-253-4803  
Fax: 559-253-4890

**Refer Reply to:**

AP:CO:FRC:TC

**In Re:**

Freedom of Information Act:  
Client: WILLIAM D. PHILIPS

**FOIA Case Number:**

F12256-0207

Date: **JAN 10 2013**

ADAM J. CONTI  
ADAM J CONTI LLC  
400 NORTHRIDGE ROAD SUITE 225  
ATLANTA GA 30350

Dear Mr. Adam J. Conti:

This letter is in response to your Freedom of Information Act (FOIA) appeal dated November 20, 2012, in which you sought review of the Disclosure Specialist's October 30, 2012 response to your FOIA request dated September 7, 2012.

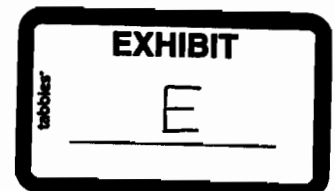
You requested documentation on behalf of your client, William D. Phillips. You stated that you requested e-mails generated from June 1, 2012 through June 5, 2012 between W. Ankrum, I Sanches and S. Manning that specifically contained your clients name within the subject line or in the content of the message.

The Disclosure Specialist stated that they provided 2 responsive documents in full and stated that the response was a full grant of the request.

You submitted an appeal stating that you believe there are documents that exist and should be provided. You requested a review of the Disclosure Specialist search. You requested that the Appeals Office overturn Disclosure Specialist's initial determination and compel the Office of Disclosure to produce all records requested.

Appeals responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. Appeals only has jurisdiction over the denial of documents in response to a FOIA request. We address the adequacy of the search, the appropriateness of the redactions and documents withheld.

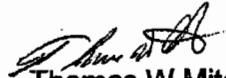
As a courtesy, we reviewed the Disclosure Specialist search methods for the documents and found that the Disclosure Specialist did not deny your request for documents or exempted them under the FOIA. FOIA allows access to records and documents in your accounts and operating systems. The Disclosure office reviews the account and pulls the necessary files, copies and provides the documents. The FOIA does not require an agency to analyze the files for the documents requested nor prepare documents in response to your request. The Disclosure Specialist provided the documents found that were specifically requested.



We cannot address your assertions that other documents exist. We can only address whether the search was reasonable. In regard to the adequacy of a search, an agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993). We believe that the Disclosure Office has met its burden in regard to the adequacy of the search. The Disclosure Office is obligated to research your account for the documents requested. This was done. An agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993).

The Disclosure Specialist responded to your request and since the Disclosure Specialist did not deny any documents, there is no jurisdiction for this office to consider an appeal. Accordingly, we have closed the case file.

Sincerely,



Thomas W Mitchell  
Appeals Team Manager